

the process combined with the tremendous financial savings make the Private Court a truly viable ADR method. It is to be noted that any decision is an "award" under the *Arbitrations Act* (Ontario) and the parties have the option of an appeal to the Ontario Divisional Court in the event they are dissatisfied with the result. The Dean of Canadian Lawyers, Mr. J.J. Robinette, is one of the adjudicators available for dispute resolution within this forum.

### 5. Rent-a-Judge

This ADR technique is used frequently in California and is provided for through legislation. The statutory provisions allow for the appointment of a referee (usually a retired judge) who hears the case and renders a decision within 20 days of the close of presented testimony. It is noteworthy that Nova Scotia Civil Procedure Rule 35 provides for a similar procedure whereby a court proceeding may be referred to an appointed referee for a trial. The decision of this individual is then submitted to the court which may then, among other things, adopt the report in whole, vary or reverse it.

Private firms have also been providing "Rent-a-Judge" services. For example, Judicate (established in 1983) provides a roster of judges who are available to settle disputes for specified fees. A party must pay a \$75 filing fee and \$125 for a one hour settlement conference.

Should the conference fail to effect a compromise between the parties, a three hour hearing is scheduled. Each disputant must pay \$375 for the service. As with many other forms of ADR, the proceedings are held in private.

Other forms of Alternate Dispute Resolution exist and are employed regularly with success. However, for the sake of brevity, I have attempted to provide a quick overview of a few of the techniques which maintain a higher profile within the Canadian context. It is important to recognize that most ADR methods are not suitable for instances where the parties are not open to the possibility of settlement and are reluctant to compromise.

### Conclusion

Alternate Dispute Resolution offers great hope and promise for improving the civil justice system in the 1990s. Attorney General Tom McInnes is reported to have stated recently that "the justice system has to be accessible, it has to be efficient." While the backlog once present within the Nova Scotian court system has been reduced considerably, alternative methods of dispute resolution would offer practitioners novel and effective ways in which to achieve settlements and serve client needs. In some jurisdictions, ADR also stands for "A Dignified Resolution". Perhaps the time for the employment of these measures is now upon us.

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## THE SURVEY AND CERTIFICATION OF LOCATION OF REAL PROPERTY

by  
David C. Clark

Under consideration at this time by professional Land Surveyors across Canada is the subject of the Land Surveyor's "Certification" of location of lands and buildings for real estate transfer and mortgaging purposes. This matter has come to the forefront recently, due to the absence of a common standard of quality and accuracy required by the mortgage lending institutions.

Before a lending institution will give a mortgage on real property, it requires a Certification of the *extent of title* from a professional Land Surveyor that the land exists as conveyed by the deed, that the buildings are located on the land, and that the land is free of encroachments and other problems affecting the extent of title. The lenders also

require a Certification of the *chain of title* from a lawyer, to indicate that there are no significant defects in the transfer of title to the land over the preceding years, and that there is marketable title to the property.

From the Land Surveyor, many of the lending institutions require an up-to-date, fully researched land survey giving full particulars about all boundaries and improvements on the parcel. Other lenders however, may only assume that a land survey has been performed, and as long as the Land Surveyor certifies that the house is on the right lot, they may believe that title to the property is clear and marketable.

The purpose of a land survey is to re-establish the original legal boundaries of a property, and to delineate the physical characteristics of the parcel of land in relation to those original boundaries. The Land Surveyor must consider the best evidence available, and re-establish the boundary on the ground in the location where it was first

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established, not necessarily where it was described either in the conveying document or on a plan. The property boundaries should exist and be described as they were originally established, but sometimes there may be variances, and only a Land Surveyor is legally qualified to advise upon the true location and the extent of title to the property.

The land survey for mortgage purposes also includes the physical location of all structures, rights-of-way, easements, etc., relative to the property boundaries on the date that the survey is prepared. Many factors may occur over time to alter the extent of title or to physically change the nature of real property. Renovations may alter the size of a structure or contravene a municipal by-law, construction on an adjacent lot may encroach across a property boundary, an easement may have been created, or a misdescription may have occurred in an earlier transaction.

The lending institutions need to know the physical characteristics of a property, and whether the conveying document (deed etc.) portrays the property as it exists. If a lender is prepared to advance money to a purchaser, the security for the loan is the property itself. The lender, therefore, must be satisfied that the property and the title to it are clear of all defects and encumbrances that might cause legal complications after the transaction has been completed. The fully researched survey, therefore, when certified by the Land Surveyor to the client as being correct on the date that the survey is completed, is vital to the lending institution's requirements for verification of marketable title.

The Association of Nova Scotia Land Surveyors has become very concerned that Land Surveyors are being put in positions of considerable risk by the misuse of this certifying procedure. Some of these so-called certifications are being improperly presented; they may be misleading in

what they do not include, and may be ambiguous in stating to whom or for whom the information or warranty is being provided. Sometimes a certification from an earlier transfer of a property may be re-used without being updated to the time of the current transfer. The users of these certifications do not seem to realize that these are copyrighted documents, certified to the original client, and valid only on the date executed. There is little appreciation of the liability involved, or of the possible implications in years to come that this misuse could create.

The Canadian Council of Land Surveyors (C.C.L.S.), the national umbrella organization of professional Land Surveyors, has recently moved to address this whole issue. The C.C.L.S. has developed and distributed a policy statement which sets out the minimum requirements for the preparation of the "*Surveyor's Real Property Report*". This new name will replace the names "Mortgage Certificate", "Location Survey", "Surveyor's Certification" and other terms currently in use. The C.C.L.S. is now approaching the various lending organizations, promoting the use of the "*Surveyor's Real Property Report*" as being the minimum standard across Canada, in the presentation of the professional Land Surveyor's certification of the extent of title at the time of a real property transaction.

The Association of Nova Scotia Land Surveyors, in its continuing effort to enhance the professional services provided by its members, is presently developing new Survey Regulations which will incorporate the national policy guideline of the Canadian Council of Land Surveyors. Nova Scotia Land Surveyors will strive to maintain high standards of quality and accuracy in order that the public will continue to be served and protected.

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